IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE R.BASANT

WEDNESDAY, THE 26TH SEPTEMBER 2007 / 4TH ASWINA 1929

Bail Appl..No. 5792 of 2007()

AGAINST THE JUDGEMENT/ORDER IN OP.17355/2002 Dated 02/07/2002

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PETITIONER/ACCUSED

M.A.SALAM, S/O MOHAMMED KUNJU,
KALEEKAL, K.S.PURAM, KARUNAGAPPALLY,
KOLLAM.

BY ADV. SRI.K.ABDUL JAWAD

RESPONDENTS: COMPLAINANT

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1. STATE OF KERALA, RPERESENTED BY THE
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,ERNAKULAM.

2. CIRCLE INSPECTOR OF POLICE,
KARUNAGAPPALLY.

3. SUB INSPECTOR OF POLICE,
KARUNAGAPPALLY.

BY PUBLIC PROSECUTOR SRI.S.U. NAZAR.

THIS BAIL APPLICATION HAVING COME UP FOR ADMISSION ON 26/09/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

R. BASANT, J.

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B.A.No. 5792 of 2007

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Dated this the 26th day of September, 2007

O R D E R

Application for anticipatory bail. The petitioner is the first accused. He faces allegations under Section 420 I.P.C. The crux of the allegations against the petitioner is that he made false representation to fraudulently induce the defacto complainant and another to part with an amount of Rs.75,000/- each on the lure of making job abroad available to them on a VISA. The crux of the allegations is that copy of a VISA was fraudulently shown to the defacto complainant and his friend to induce them to part with money. Crime has been registered. Investigation is in progress. The petitioner apprehends imminent arrest.

2. The learned counsel for the petitioner submits that the petitioner is absolutely innocent. The petitioner has a grievance that the defacto complainant and his friend are total strangers to the petitioner and that false and vexatious allegations are raised against the petitioner at the behest of a Sub Inspector, who was in charge of

the local police station earlier. The petitioner had to cross swords with the said Sub Inspector and a complaint was filed by the petitioner before the superior authorities. Actuated by malafides, to vex and harass the petitioner, totally false allegations are raised by absolute strangers against the petitioner with vexatious intent. The petitioner apprehends harm if he were taken into custody by the police. The former Sub Inspector, who is now a Circle Inspector, is pulling the strings to vex and harass the petitioner, it is alleged.

3. The learned Prosecutor stoutly opposes the application. He submits that the story advanced is all imaginary and false. The former Sub Inspector, who was allegedly employed at that station, has absolutely no part to play in the present case. The defacto complainant and his friend have been questioned. Respectable witnesses who were present along with the victims have also been questioned. The petitioner is trying to take advantage of some earlier proceedings to wriggle out of the inconvenient situation in which he is, on account of his subsequent culpable conduct. In any view of the matter, this is not a fit case where the extra ordinary equitable discretion under Section 438 Cr.P.C. can or ought to be invoked

in favour of the petitioner. He may be directed to appear before the Investigating Officer or the learned Magistrate having jurisdiction and seek regular bail in the ordinary course, submits the learned Prosecutor. In the nature of the contentions raised, the learned Prosecutor was requested to place the case diary before me. The case diary has been perused by me. At this early stage of investigation, I shall scrupulously avoid any detailed discussion on merits about the acceptability of the allegations raised or the credibility of the data collected. Suffice it to say that I have anxiously gone through the case diary. I have peruse the statement of the defacto complainant, his friend, who has also allegedly deceived, as also the witnesses who were present when the parties had entered into the transaction. This I am satisfied is a fit case where the petitioner must resort to the ordinary and normal procedure of appearing before the Investigator or the learned Magistrate having jurisdiction and then seek regular bail in the ordinary course.

5. This application is accordingly dismissed. Needless to say, if the petitioner appears before the Investigating Officer or the learned Magistrate having jurisdiction and applies for bail after giving sufficient

prior notice to the Prosecutor in charge of the case, the learned Magistrate must proceed to pass orders on merits, in accordance with law and expeditiously.

(R. BASANT)
Judge

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